

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
)
Qwest Petition for) WC Docket No. 03-59
Limited Modification of LATA)
Boundaries to Provide Expanded Local)
Calling Service (ELCS))

MEMORANDUM OPINION AND ORDER

Adopted: September 26, 2003

Released: September 26, 2003

By the Chief, Competition Policy Division:

I. INTRODUCTION

1. On February 20, 2003, Qwest Corporation (Qwest), pursuant to section 3(25) of the Communications Act of 1934, as amended (the Act),¹ filed a petition (Qwest Petition) to provide two-way, non-optional, expanded local calling service (ELCS) between various exchanges in Minnesota.² Qwest’s petition requests limited modification of numerous local access and transport area (LATA) boundaries to provide ELCS between the Lonsdale Telephone Company’s Lonsdale, Minnesota exchange and certain Qwest exchanges in Minnesota, as required by the Minnesota Public Utilities Commission (Minnesota Commission).³ For the reasons stated below, we grant Qwest’s petition.

II. BACKGROUND

2. Requests for new ELCS routes are generally initiated by local subscribers.⁴ Although intraLATA ELCS routes can be ordered by a state commission,⁵ under section 3(25)(B) of the Act,

¹ See 47 U.S.C. § 153(25). Section 3(25) of the Act defines LATAs as those areas established prior to enactment of the Telecommunications Act of 1996 by a Bell Operating Company (BOC), as permitted under the AT&T Consent Decree, or “established or modified by a BOC after such date of enactment, and approved by the Commission.” *Id.*

² See Request by Qwest Corporation for Limited Modification of LATA Boundaries to Provide ELCS Between 49 Exchanges, WC Docket No. 03-59 (filed Feb. 20, 2003) (Qwest Petition). See *Comment Sought on Qwest Corporation Request for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service Between its Exchanges in the Minneapolis/St.Paul Metropolitan Calling Area and Lonsdale Telephone Company’s Lonsdale Exchange in Minnesota*, WC Docket No. 03-59, Public Notice, DA No. 03-637 (rel. Mar. 6, 2003). We note that all of the exchanges are in Minnesota.

³ See Qwest Petition at 1.

⁴ The Qwest Petition was initiated by Lonsdale Telephone Company subscribers. See Qwest Petition at 2.

⁵ *United States v. Western Electric Company, Inc.*, 569 F. Supp. 990, 995 (D.D.C. 1983). “The distance at which a local call becomes a long distance toll call has been, and will continue to be, determined exclusively by the various state regulatory bodies.” *Id.*

requests for interLATA ELCS routes fall within the Federal Communications Commission's (Commission) exclusive jurisdiction.⁶ Applying a two-part test, the Commission will grant a request for a LATA modification where: (1) the applicant proves that the requested LATA modification would provide a significant public benefit; and (2) granting the petition would not remove a BOC's incentives to fulfill its section 271 obligations.⁷

3. The Qwest Petition proposes to establish two-way, non-optional ELCS, and is accompanied by an order issued by the Minnesota Commission approving the ELCS request on the basis that sufficient communities of interest exist to warrant such service,⁸ a statement that only traditional local service is proposed, poll results demonstrating that communities of interest exist between the respective exchanges,⁹ traffic data,¹⁰ and a statement of the number of access lines involved.¹¹

III. DISCUSSION

4. We conclude that Qwest's petition satisfies our two-part test. Applying the first prong of the two-part test, we find that Qwest has shown that a public benefit would result from the ELCS because a sufficient community of interest exists among the affected exchanges to justify their being treated as a local calling area.¹² First, we note that Qwest proposes to offer traditional, two-way, non-optional local service in the ELCS, which the Commission has determined to be an indicator of a community of interest among the affected exchanges.¹³ Further, the Minnesota Commission conducted an extensive community of interest

⁶ *Application for Review and Petition for Reconsideration or Clarification of Declaratory Ruling Regarding US WEST Petitions to Consolidate LATAs in Minnesota and Arizona*, NSD-L-97-6, Memorandum Opinion and Order, 14 FCC Rcd 14392-99 (1999).

⁷ *See Deployment of Wireline Services Offering Advanced Telecommunications Capability, Request by Bell Atlantic-West Virginia for Interim Relief Under Section 706, or, in the Alternative, a LATA Boundary Modification*, CC Docket No. 98-147, Fourth Report & Order & Memorandum Opinion & Order, 15 FCC Rcd 3089, 3097-3100 (2000) (*Advanced Services LATA Order*) (denying Verizon request to transport high-speed data from Morgantown, West Virginia LATA to the Pittsburgh, Pennsylvania LATA); *see also Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, CC Docket 96-159, Memorandum Opinion and Order, 12 FCC Rcd 10646, 10649-50 (1997) (*July 1997 LATA Order*). In this order, the Commission also delegated authority to the Common Carrier Bureau (now the Wireline Competition Bureau) to resolve petitions to modify LATA boundaries to provide ELCS. *July 1997 LATA Order*, 12 FCC Rcd at 10657-58.

⁸ Qwest Petition at Exhibit A.

⁹ Nearly 70% of the subscribers in the Lonsdale exchange participated in the poll with 66% voting in favor of ELCS. Qwest Petition at 4.

¹⁰ The Qwest Petition states that over 50% of subscribers in the Lonsdale exchange made three or more calls per month to the Minneapolis/St. Paul area. Qwest Petition at 3.

¹¹ The majority of calls are expected to originate from the Lonsdale exchange, which has approximately 1,700 access lines. Qwest Petition at 3.

¹² *See July 1997 LATA Order*, 12 FCC Rcd at 10649-50 (public interest is served by communities being able to obtain local calling).

¹³ Qwest Petition at 2. Although Qwest proposes to offer measured rate service in addition to flat-rated service, that does not alter our conclusion that a sufficient community of interest exists among the affected exchanges to justify the ELCS. The services that Qwest proposes to offer in the expanded local calling area are identical to the service options (measured or flat-rate) that were available prior to the implementation of ELCS. *Id.* Although the Commission has traditionally favored flat-rated service as the best indicator that a community of interest exists among the affected exchanges, the Commission has granted LATA boundary modifications for measured rate ELCS where the service offered in the proposed ELCS is identical to that offered prior to the application. *See Bell-Atlantic-Virginia, Inc. Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling service (ELCS) at Various Locations*, Memorandum and Order, File No. NSD-L-97-45 (rel. April 21, 1998) (*April*

(continued....)

analysis prior to approving the ELCS.¹⁴ We find it a persuasive indicator of a community of interest that Qwest's petition satisfies all of the Minnesota Commission's community of interest criteria, including customer polling data demonstrating that over 60 percent of Lonsdale residents favored ELCS and traffic data indicating that over 50 percent of Lonsdale residents made three or more calls per month to the Qwest exchanges.¹⁵ We also note that no party filed any opposing comments to the Qwest Petition. We find, therefore, that the petition is based on a significant community of interest, and thus satisfies the first prong of our two-part test.

5. Qwest also satisfies the second prong of the two-part test because Qwest has already opened its market to competition in Minnesota and, accordingly, has been granted authority under section 271 to offer long distance service in that state.¹⁶ Moreover, we conclude that the LATA boundary modifications would have a minimal effect upon competition because modification of any of the individual LATA boundaries would affect only a small number of access lines.¹⁷ As a result, we believe that granting Qwest's petition serves the public interest by permitting minor LATA modifications where such modifications are necessary to meet the needs of local subscribers. Accordingly, we approve Qwest's petition for limited LATA boundary modifications.

6. We grant this relief solely for the limited purpose of allowing Qwest to provide ELCS between the specific exchanges or geographic areas identified in this request. The LATAs are not modified to permit Qwest to offer any other type of service, including calls that originate or terminate outside the specified areas. Thus, two-way, non-optional ELCS between the specified exchanges will be treated as intraLATA service.¹⁸

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1998 LATA Order) (granting ELCS petition where proposed service was the same as that existing prior to the application); *Bell Atlantic-Virginia Petition for Limited Modification of LATA Boundary to Provide Expanded Local Calling Service (ELCS)*, File No. NSD-98-143, Memorandum and Order, 14 FCC Rcd 4371 (1999) (granting ELCS petition where proposed service was the same as that existing prior to the application).

¹⁴ See Qwest Petition at Exhibit A.

¹⁵ Qwest Petition at 2.

¹⁶ *Application by Qwest Communications International Inc., for Authorization to Provide In-Region, InterLATA Services in Minnesota*, WC Docket No. 03-90, Memorandum Opinion and Order, 18 FCC Rcd 13323 (2003).

¹⁷ For the purposes of ELCS petitions, we generally consider the access lines from customers in the exchange who seek to reach businesses, services, etc. in the other exchange (this exchange usually generates the majority of calls between the two exchanges). See *Southwestern Bell Petitions for Limited Modifications of LATA Boundaries to Provide Expanded Local Calling Service (ELCS)*, WC Docket No. 02-134, Memorandum Opinion and Order, 17 FCC Rcd 25540 (2002). Therefore, for the purposes of reviewing these modifications, we will consider the 1,700 access lines in the Lonsdale exchange, a number within Commission precedent. See *April 1998 LATA Order, supra* n.13 (granting an ELCS petition affecting over 30,000 access lines). See Qwest Petition at Exhibit C for a complete list of all affected exchanges.

¹⁸ Other types of service between the specified exchanges will remain interLATA, and the provisions of the Act governing interLATA service will apply. See, e.g., 47 U.S.C. § 272(f)(1) (stating that a BOC is required to provide interLATA services through a separate affiliate for three years after the date on which it is authorized to provide in-region, interLATA telecommunications services).

IV. ORDERING CLAUSE

7. Accordingly, IT IS ORDERED, pursuant to sections 3(25) and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 153(25), 154(i), and authority delegated by sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the request of Qwest for LATA boundary modifications for the limited purpose of providing two-way, traditional, non-optional ELCS at specific locations in Minnesota, identified in WC Docket No. 03-59, IS APPROVED.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief, Competition Policy Division
Wireline Competition Division